

The Honorable John H. Chun

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

No. 2:23-cv-00932-JHC

**DECLARATION OF MARK  
ENGLAND IN SUPPORT OF  
AMAZON.COM, INC.'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO DESEQUESTER  
DOCUMENTS CLAWED BACK  
BY DEFENDANT**

I, Mark England, declare as follows:

1. I am an attorney for Defendant Amazon.com, Inc. ("Amazon" or the "Company"). Unless otherwise noted, the matters set forth herein are true and correct to the best of my own knowledge and, if called as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Amazon's opposition to Plaintiff's Motion to Desequester. Nothing in this declaration is intended to or should be construed to constitute a waiver of Amazon's attorney-client privilege and work product protection asserted in its privilege logs as to the documents discussed therein.

DECLARATION OF MARK ENGLAND IN SUPPORT OF AMAZON.COM,  
INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO DESEQUESTER  
DOCUMENTS CLAWED BACK BY DEFENDANT (2:23-cv-00932-JHC) - 1

3. I am Senior Corporate Counsel for Amazon. I have been employed at Amazon since February 2020. In my role, I advise Amazon on various legal issues. Those issues have included legal advice relating to the Prime sign-up and cancellation processes.

4. I received a law degree from University College London in 2007. In 2009, I received a postgraduate diploma in Legal Practice from BPP University. I first practiced law as a trainee in 2010, and I was admitted as a solicitor in February 2012.

5. I have reviewed the documents that the FTC identified as having been submitted *in camera* in Attachment 37 to the Declaration of Adam Rottner in support of the FTC's Motion to Desequester.

#### **Clarity and FTC Investigation**

6. Since 2021, a significant portion of my responsibilities has involved the "Clarity" workstreams at Amazon. The Clarity workstreams are a series of initiatives focused on improving the Amazon customer experience by soliciting customer feedback and assessing possible changes to the Prime sign-up and cancellation processes.

7. I am one of several attorneys who have provided Amazon with legal advice relating to these topics. Dan Borden, Marla Dunn, Ben Garry, Susan Kremer, Michael Miller, Karen Ressimeyer, Azalea Richter, and Praju Tuladhar, are among the other Amazon attorneys who have provided advice on these topics.

8. As part of Amazon's continuing efforts to evaluate the sign-up and cancellation processes for Amazon Prime, Amazon has held numerous meetings to discuss potential changes. As I am one of the attorneys who provides advice to the Company regarding these issues, Company personnel frequently sought my legal advice regarding possible changes.

9. On March 16, 2021, the FTC issued a Civil Investigative Demand ("March CID") calling for information about the Amazon Prime sign-up and cancellation processes.

10. After Amazon received the March CID, I reviewed the March CID and provided Amazon with legal advice in connection with the FTC's investigation.

**May 6, 2021 Meeting**

11. In early 2021, the Prime team was contemplating possible changes to the Prime sign-up and cancellation processes. The Prime team scheduled a meeting with leaders from Amazon, including Neil Lindsay and Dave Clark. That meeting was initially scheduled to occur prior to March 16, 2021.

12. Due to scheduling and other considerations, the meeting was postponed until May 6, 2021 (“May 6 Meeting”). As a result, Amazon received the March CID before that meeting occurred.

13. After receiving the March CID, the Prime team revised the purpose of the May 6 Meeting to focus primarily on legal considerations involving the Prime sign-up and cancellation processes. Mr. Tuladhar and I intended to provide legal advice during the meeting to Dave Clark and other senior Amazon leaders regarding the Prime sign-up and cancellation processes and potential changes to those processes. Mr. Tuladhar and I substantially revised the materials prepared for that meeting to incorporate our legal advice, particularly because we understood that the March CID indicated that the FTC was contemplating bringing a lawsuit against Amazon relating to the Prime sign-up and cancellation processes.

14. **IC-34** (Amazon-FTC-CID\_09246134) is a Chime meeting chat. This document, titled “Privileged and Confidential : Touch base on Prime Account CX Satisfaction” is the chat associated with a May 4, 2021 meeting during which Mr. Tuladhar and I discussed with the Prime team the document that we had revised for the May 6 Meeting.

15. **IC-1** (Amazon-FTC-CID\_09246136) is the draft document that Mr. Tuladhar and I revised in advance of the May 6 Meeting. That document reflects our legal advice regarding potential changes to the Prime sign-up and cancellation processes. Specifically, the document reflects our legal advice regarding (1) whether the Prime sign-up and cancellation processes complied with applicable laws and regulatory requirements; and (2) our assessment of potential U.S. and European regulatory enforcement actions. Mr. Tuladhar and I provided this information so that Amazon could consider that legal advice when making any decisions

1 and so that the Company would be better prepared for litigation, including if the FTC  
 2 subsequently decided to bring an enforcement action. In advance of the meeting with Mr.  
 3 Clark, Mr. Tuladhar shared this document with a smaller group during the May 4, 2021  
 4 meeting reflected by IC-34. He did so in order to share his preliminary legal advice and solicit  
 5 feedback on the draft document.

6 16. **IC-36** (Amazon-FTC-CID\_09246157) is a copy of IC-1 that reflects additional  
 7 feedback that Neil Lindsay provided during the May 4, 2021 meeting.

8 **July 14, 2021 Meeting**

9 17. Following the May 6 Meeting, Mr. Tuladhar and I provided legal advice to  
 10 Amazon regarding possible changes to the Prime sign-up and cancellation processes as  
 11 informed by the May 6 Meeting.

12 18. On July 14, 2021, the Prime team met to discuss next steps regarding that  
 13 workstream, including additional legal considerations relating to the Prime sign-up and  
 14 cancellation processes (“July 14 Meeting”). Mr. Tuladhar and I participated in this meeting to  
 15 provide legal advice regarding steps that the Company was contemplating.

16 19. **IC-4** (AMZN\_00045917) and **IC-5** (AMZN\_00045918) are documents that  
 17 were prepared for the July 14 Meeting. These documents were prepared to provide me and Mr.  
 18 Tuladhar with information about specific changes that the Prime team was contemplating, so  
 19 that we could provide legal advice during the July 14 Meeting regarding those contemplated  
 20 changes. These documents were sent to me and Mr. Tuladhar on July 14, 2021 for our review  
 21 prior to the July 14 Meeting.

22 20. **IC-6** (AMZN\_000112860) is another copy of the document identified as IC-4.  
 23 This copy was shared during the July 14 Meeting with the meeting participants, including me  
 24 and Mr. Tuladhar.

25 21. **IC-31** (Amazon-FTC-CID\_08427042) and **IC-48** (Amazon-FTC-  
 26 CID\_09910965) are additional copies of the document for the July 14 Meeting. These copies  
 27 reflect what I understand to be Jamil Ghani’s handwritten notes.

22. **IC-16** (AMZN\_00137982) is a copy of a chat conversation between Nikki Baidwan and Caroline Moeller in advance of the July 14 Meeting. During that conversation, Ms. Moeller and Ms. Baidwan discussed various issues to prepare for the July 14 Meeting. The redacted portion reflects determinations made during the May 6 Meeting as the result of legal advice we discussed during that meeting.

23. During their chat conversation, Ms. Baidwan and Ms. Moeller shared updated drafts of the materials prepared for the July 14 Meeting. **IC-17** (AMZN\_00137986) and **IC-22** (AMZN\_00138070) are additional iterations of IC-4, which I discuss above. **IC-18** (AMZN\_00137994), **IC-19** (AMZN\_00138019), **IC-20** (AMZN\_00138020), and **IC-21** (AMZN\_00138045) are additional iterations of IC-5, which I discuss above. These are all iterations of documents that were prepared to provide me and Mr. Tuladhar with information about specific changes that the Prime team was contemplating, so that we could provide legal advice during the July 14 Meeting regarding those contemplated changes.

#### **Prime Headwinds**

24. Amazon refers to “headwinds” to identify business challenges that the Company confronts. Amazon regularly considers regulatory compliance when analyzing business challenges.

25. On May 10, 2021, the Prime team met with Dave Clark, Mr. Tuladhar, and others to discuss the most pressing challenges for the Prime business. **IC-37** (Amazon-FTC-CID\_09389533) is a document prepared for that meeting. The redacted portion of the document reflects legal analysis of the likelihood of potential U.S. and European regulatory enforcement actions and assesses the legal consequences of potential changes to the Prime sign-up and cancellation experiences.

26. **IC-2** (AMZN\_00026293) is an email chain among me, Mr. Tuladhar, and Amazon business personnel sharing a draft of a document describing headwinds to the Prime business. The emails, which were sent in May and June 2021—after Amazon received the March CID—were directed to me and Mr. Tuladhar and requested our legal advice in

1 connection with sharing certain information with others at Amazon. I understood this email  
 2 chain to reflect requests from Benjamin Hills and Pranali Choubal for legal advice from me and  
 3 Mr. Tuladhar regarding the sharing of privileged information with others at Amazon. When I  
 4 was copied on such a communication, it was my practice to inform the participants if I had  
 5 legal concerns regarding their actions.

6 27. **IC-3** (AMZN\_00026294) is a document that was attached to the email identified  
 7 as IC-2. The document reflects legal advice that I and others provided to Amazon. Specifically  
 8 with respect to the section of the document discussing Prime sign-up and cancellation flows,  
 9 the document reflects legal advice regarding potential regulatory enforcement action. The  
 10 document also reflects legal advice regarding Amazon's potential responses to such an  
 11 enforcement action.

12 28. **IC-11** (AMZN-00118740) reflects a June 15, 2022 status update in connection  
 13 with the May 6 Meeting. The redacted portions on pages 3 and 6 of the document reflect  
 14 determinations made during the May 6 Meeting as the result of legal advice discussed during  
 15 that meeting. The redacted portion on page 5 reflects legal advice regarding potential European  
 16 regulatory enforcement action.

17 29. **IC-10** (AMZN-00117727) reflects a July 18, 2022 status update in connection  
 18 with the May 6 Meeting. The redacted portion of the document reflects determinations made  
 19 during the May 6 Meeting as the result of legal advice discussed during that meeting.

20 30. **IC-12** (AMZN-00118757) reflects an August 31, 2022 status update in  
 21 connection with the May 6 Meeting. The redacted portion of the document reflects  
 22 determinations made during the May 6 Meeting as the result of legal advice discussed during  
 23 that meeting.

24 31. Beginning in August 2021, Amazon's Prime Headwinds Updates incorporated a  
 25 number of issues relating to the Prime sign-up and cancellation flows. These updates  
 26 incorporated legal advice on several different issues, including: (1) determinations made during  
 27 the May 6 Meeting as the result of legal advice discussed during that meeting; (2) analysis of

potential U.S. and European regulatory enforcement actions; (3) legal advice from Amazon lawyers regarding the legal and regulatory compliance of specific changes to the Prime cancellation process; and (4) legal analysis of ongoing litigation between Apple and Epic Games. This legal advice is reflected in several versions of the Prime Headwinds documents, including: **IC-24** (AMZN\_00140183) (August 26, 2021 Prime Headwinds Review and Risk Assessment); **IC-25** (AMZN\_00140201) (August 26, 2021 Prime Headwinds Review and Risk Assessment with comments); **IC-44** (Amazon-FTC-CID\_09839018) (August 26, 2021 Prime Headwinds Update); **IC-45** (Amazon-FTC-CID\_09839042) (August 26, 2021 Prime Headwinds Update); **IC-23** (AMZN\_00138192) (September 27, 2021 Prime Headwinds Update); **IC-28** (AMZN\_00154689) (September 27, 2021 Prime Headwinds Update); **IC-14** (AMZN\_00126489) (October 15, 2021 Prime Headwinds Update); **IC-26** (AMZN\_00141381) (October 15, 2021 Prime Headwinds Update); **IC-32** (Amazon-FTC-CID\_08784408) (October 15, 2021 Prime Headwinds Update); **IC-38** (Amazon-FTC-CID\_09407590) (October 15, 2021 Prime Headwinds Update); **IC-41** (Amazon-FTC-CID\_09795246) (October 15, 2021 Prime Headwinds Update); **IC-42** (Amazon-FTC-CID\_09795274) (October 15, 2021 Prime Headwinds Update); **IC-43** (Amazon-FTC-CID\_09818779) (October 15, 2021 Prime Headwinds Update); **IC-49** (Amazon-FTC-CID\_09929606) (October 15, 2021 Prime Headwinds Update); **IC-33** (Amazon-FTC-CID\_08784437) (October 15, 2021 Prime Headwinds Update with comments); and **IC-47** (Amazon-FTC-CID\_09840614) (October 15, 2021 Prime Headwinds Update with comments).

32. **IC-8** (AMZN\_00067288) is an email discussion regarding revisions to the October 15, 2021 Prime Headwinds Update described above. The email extracts portions of the document that reflect (1) determinations made during the May 6 Meeting as the result of legal advice discussed during that meeting; and (2) legal advice regarding potential European regulatory enforcement action.

33. **IC-27** (AMZN\_00143228) is an email containing an early draft of a Prime Headwinds Update. The redacted portions of this email reflect determinations made during the



May 6 Meeting as the result of legal advice discussed during that meeting, as well as a legal assessment of potential U.S. and European regulatory enforcement action.

34. **IC-39** (Amazon-FTC-CID\_09454557) contains a brief discussion of Prime's ongoing efforts to study the Prime sign-up and cancellation processes. The redacted portion conveys legal advice relating to potential U.S. and European regulatory enforcement actions.

**Prime Growth Outlook and Other Strategy Documents**

35. As part of the Prime business, Amazon regularly forecasts future business performance. Senior Amazon leaders with responsibility for the Prime business attend Prime Growth Outlook meetings to discuss the expected performance of the business.

36. The Prime team held a Prime Growth Outlook meeting on May 24, 2022. A portion of the discussion during that meeting related to possible changes to the Prime sign-up and cancellation processes. I understand that Mr. Garry and Mr. Borden attended that discussion to provide legal advice regarding the Prime sign-up and cancellation processes.

37. **IC-7** (AMZN\_00064610) is the document that was prepared for the May 24, 2022 Prime Growth Outlook meeting. The redacted sections of that document reflect (1) an analysis of potential European regulatory enforcement action; and (2) a summary of a decision made during the May 6 Meeting that reflects legal advice discussed during that meeting.

38. **IC-13** (AMZN\_00120240) is another copy of IC-7 that was sent out prior to the May 24, 2022 Prime Growth Outlook meeting to the meeting participants, including Mr. Garry and Mr. Borden.

39. **IC-15** (AMZN\_00126647) is another copy of IC-7 that was shared with participants, including Mr. Garry and Mr. Borden, via Chime during the May 24, 2022 Prime Growth Outlook meeting.

40. **IC-29** (AMZN\_00160403) summarizes Prime's strategy regarding certain updates to the Prime sign-up process. The redacted portion of the document reflects determinations made during the May 6 Meeting as the result of legal advice discussed during that meeting.



41. **IC-46** (Amazon-FTC-CID\_09839753) is a collection of materials prepared to assist Neil Lindsay in preparation for meetings with Amazon's Board of Directors. The redacted portions on pages 10 and 53 reflect legal advice regarding potential U.S. and European regulatory enforcement actions and convey legal advice regarding the Company's response to those potential actions.

#### **Preparation for Congressional Testimony**

42. On March 4, 2020, Dharmesh Mehta, Vice President, Worldwide Customer Trust and Partner Support, testified before the Subcommittee on Consumer Protection and Commerce of the U.S. House Committee on Energy and Commerce.

43. I understand that Mr. Mehta worked closely with Amazon lawyer Charles Wright to prepare for his testimony. As part of that preparation, Mr. Wright edited and commented on the documents that Mr. Mehta used to prepare for his testimony.

44. **IC-40** (Amazon-FTC-CID\_04911366); **IC-50** (Amazon-FTC-CID\_04910492); **IC-51** (Amazon-FTC-CID\_04910496); **IC-52** (Amazon-FTC-CID\_04910521); **IC-53** (Amazon-FTC-CID\_04910919); **IC-54** (Amazon-FTC-CID\_04910933); and **IC-55** (Amazon-FTC-CID\_04910969) are documents that Mr. Mehta used to prepare for his testimony. Mr. Wright was involved in the preparation of these documents, and they reflect Mr. Wright's legal judgment and analysis of issues that were important to the Company.

#### **Advice Regarding Attorney-Client Privilege**

45. From time to time, Amazon lawyers provide business personnel with legal advice regarding the scope of the attorney-client privilege.


46. **IC-9** (AMZN\_00102776) is the record of a chat conversation between two Amazon business persons, Reid Nelson and Caroline Moeller. The redacted sections of this document discuss what I understand to be legal advice that Mr. Nelson and Ms. Moeller received from Amazon attorneys Karen Ressmeyer and Susan Kremer relating to the scope of the attorney-client privilege. In the chat, Mr. Nelson and Ms. Moeller refer to legal contacts

1 named “Karen” and “Susan.” Mr. Nelson and Ms. Moeller then proceed to discuss their  
2 understanding of the legal guidance that they received.

3 47. **IC-30** (AMZN\_00141912) is the record of a chat conversation between two  
4 Amazon business persons, Nikki Baidwan and Caroline Moeller. The redacted sections of this  
5 document discuss legal advice that I understand Ms. Moeller received from Amazon attorney  
6 Susan Kremer relating to the scope of the attorney-client privilege. In the chat, Ms. Moeller  
7 refers to a legal contact named “Susan.”

8 I declare under penalty of perjury under the laws of the United States that the foregoing  
9 is true and accurate to the best of my knowledge.

10 DATED this 24th day of July, 2023.

11  
12   
13 By \_\_\_\_\_  
14 Mark England